

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Case No. 4:21-CR-00039-1-BCW
)
)
OSWALDO F. POZO,)
)
)
Defendant.)

ORDER

Before the Court is Magistrate Judge Morris's Report and Recommendation that Defendant Oswaldo Pozo be found incompetent to stand trial in the above-captioned matter (Doc. #184). No objections were filed to the Report and Recommendation.

On August 4, 2023, Defendant was ordered to undergo a competency evaluation pursuant to 18 U.S.C. § 4241. (Doc. #150). Defendant is on bond and was examined by Dr. Stephen E. Peterson on an outpatient basis. Dr. Peterson diagnosed Defendant with a major vascular neurocognitive disorder due to a stroke accompanied by four minor strokes and stated that Defendant is permanently incompetent to stand trial. On October 6, 2023, a competency hearing was held before Magistrate Judge Morris where Dr. Peterson's report was the only evidence before her. (Doc. #165). Given the permeance of Defendant's condition as opined by Dr. Peterson and that Defendant's recovery after a major stroke is more amenable to remaining on bond, Magistrate Judge Morris held in abeyance a determination on competency and ordered briefing on the issue of Defendant's immediate commitment to the Attorney General for hospitalization and treatment under 18 U.S.C. § 4241(d).

On December 12, 2023, Magistrate Judge Morris issued the instant Report and Recommendation. (Doc. #184). Consistent with the evidence, Magistrate Judge Morris found that Defendant was presently suffering from a mental disease or defect that rendered him incompetent to stand trial and/or assist in his defense. After considering additional briefing related to Defendant's immediate commitment under § 4241(d), Magistrate Judge Morris determined Defendant could remain out on bond until space is available at a suitable medical facility designated by the Attorney General.

After an independent review of the record, the applicable law, and the parties' arguments, the Court adopts Magistrate Judge Morris's findings of fact and conclusions of law and finds Defendant is currently suffering from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assisting in his defense. Accordingly, it is hereby

ORDERED for the reasons stated in the Report and Recommendation (Doc. #184), the Court finds Defendant Oswaldo Pozo INCOMPETENT to stand trial and/or assist in his defense. It is further

ORDERED for the reasons stated in the Report and Recommendation (Doc. #184), that Defendant shall be committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4241(d)(1). The Attorney General shall hospitalize Defendant for treatment in a federal medical center for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future Defendant will attain the capacity to permit his case to proceed. It is further

ORDERED Defendant need not report to the custody of the Attorney General until space is available at a suitable medical facility designated by the Attorney General. It is further

ORDERED that until such time, Defendant shall remain out of custody subject to the previously imposed conditions of release. (Doc. #33). It is further

ORDERED that Magistrate Judge Morris's Report and Recommendation (Doc. #184), be attached to and made part of this Order.

IT IS SO ORDERED.

DATED: February 13, 2024

/s/ Brian C. Wimes

JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT